

Law Department



April 13, 1981

Terminal Tower
P. O. Box 6419
Cleveland, Ohio 44101
216 623 2200

Ms. Agatha L. Mergenovich, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

RECORDATION NO. 13054
Filed 1425

Attention: Ms. M. R. Lee, Room 2303
Recordation Unit

APR 14 1981 - 10 30 AM
INTERSTATE COMMERCE COMMISSION

Dear Ms. Lee:

Enclosed are four executed counterparts of an Agreement dated as of March 1, 1981, between ACF Sales Corporation and The Chesapeake and Ohio Railway Company. This Agreement constitutes an interim user agreement, allowing use of the equipment described below pending completion of permanent financing. The names and addresses of the parties are as follows:

Bailor: ACF Sales Corporation
750 Third Avenue
New York, New York 10017

Bailee: The Chesapeake and Ohio Railway Company
P. O. Box 6419
Cleveland, Ohio 44101

The equipment covered by the above documents consists of 450 4600 Cu.Ft. Covered Hopper Cars, to bear Bailee's Road Nos. 607000-607449, inclusive, AAR Mechanical Designation: LO. The equipment will be marked "Chesapeake and Ohio Railway," "Chesapeake and Ohio," "C&O" or "Chessie System" or in some other appropriate manner and also will be marked "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION."

Also enclosed are two drafts, totalling \$50, representing the required recordation fee.

Pursuant to the Commission's rules and regulations for recordation of certain documents under 49 U.S.C. §11303, you are hereby requested to file one of the enclosed counterparts for record in your office and return the remaining copies to me.

Very truly yours,

A handwritten signature in cursive script that reads "Louis Recher".

Louis Recher
Attorney

Enclosures (4)
LR:pm



The Chessie System railroads are the C&O, B&O, WM and affiliated lines. Chessie System, Inc. is the parent for the railroads, Chessie Resources, Inc., Western Pocahontas Corp. and The Greenbrier.

Interstate Commerce Commission
Washington, D.C. 20423

4/21/81

OFFICE OF THE SECRETARY

Louis Recher, Atty.
Chessie System
Terminal Tower
P.O.Box 6419
Cleveland, Ohio 44101

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **4/14/81** at **10:30am**, and assigned re-recording number(s). **13054**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

EXECUTED IN 5 COUNTERPARTS

OF WHICH THIS IS NO. 1

13054
RECORDATION NO. _____ Filed 1426

APR 14 1981 - 10 20 AM

INTERIM USER AGREEMENT

INTERSTATE COMMERCE COMMISSION

Dated as of March 1, 1981

between

ACF SALES CORPORATION

and

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

Covering

450 4600 Cu.Ft. Covered Hopper Cars

THIS AGREEMENT, dated as of March 1, 1981, between ACF SALES CORPORATION, a Delaware corporation (hereinafter called the "Builder"), a wholly-owned subsidiary of ACF INDUSTRIES, INCORPORATED, a New Jersey corporation (hereinafter called the "Contractor"), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (hereinafter called the "Railway"):

WITNESSETH:

The Builder and the Railway heretofore entered into a Purchase Agreement (which Purchase Agreement is made a part hereof by reference), and such addenda thereto and modifications thereof as may have been made or may be agreed upon in writing between the Builder and the Railway, whereunder the Builder agreed (among other things) to construct, at Contractor's Huntington, West Virginia plant, and to deliver to the Railway at Russell, Kentucky, or at such other point or points as directed by the Railway, and the Railway agreed to accept and pay for, 450 4600 Cu.Ft. Covered Hopper Cars ("Hopper Cars"), to bear the Railway's road numbers 607000-607449, inclusive.

As contemplated by said Purchase Agreement, the Railway intends to finance the purchase of the Hopper Cars from the Builder pursuant to an Equipment Trust Agreement to be dated as of March 1, 1981, but deliveries of the Hopper Cars are scheduled to begin on or about April 15, 1981, and the Railway will not have established said financing arrangement by that time. The Railway represents that such financing arrangement shall be established, however, on or before July 31, 1981. The Railway, in order that it may use the Hopper Cars pending establishment of such financing arrangement, desires to have temporary custody and possession of the Hopper Cars upon their completion, solely as a bailee of the Hopper Cars, and the Builder is willing to grant such temporary custody and possession to the Railway upon the terms and conditions hereinafter stated.

In consideration of the premises, the Builder hereby delivers to the Railway and the Railway hereby accepts from the Builder the Hopper Cars as of the date each of them is delivered to the Railway at Russell, Kentucky, or such other point or points as may be directed by the Railway for the period ending on the earlier of July 31, 1981, or the date of establishment of said financing arrangement. On such termination date, this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Upon delivery of each Hopper Car, the Railway's representative shall execute a Certificate of Acceptance acknowledging the receipt of delivery of each such Hopper Car under this Agreement. Title to the Hopper Cars shall remain in the Builder and the Railway's rights and interests therein are and shall be solely that of possession, custody and use as bailee under this Agreement. Transfer of title shall be effected only at the time an authorized representative of the Railway shall execute a Certificate of Manufacture and Inspection, as more fully set forth in Section (4) of the Purchase Agreement. The Railway shall, without expense to the Builder, promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, the Railway shall do such other acts as may be required by law, or reasonably requested by the Builder, for the protection of the Builder's title to and interest in the Hopper Cars.

The Railway agrees to permit no liens of any kind to attach to the Hopper Cars, and that it shall:

- (a) indemnify and save harmless the Builder from any and all claims, expenses or liabilities of whatsoever kind; and
- (b) pay any and all taxes, fines, charges and penalties that may accrue or be assessed or imposed upon the Hopper Cars or the Builder,

because of the Builder's ownership or because of the use, operation, management or handling of the Hopper Cars by the Railway during the term of this Agreement. The

Railway's obligations contained in this paragraph shall survive the termination of this Agreement.

The Railway shall, at its own expense, keep and maintain the Hopper Cars in good order and running condition and shall, at its option, repair or replace or promptly pay to the Builder the purchase price in cash of those Hopper Cars which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Hopper Car to the Railway under this Agreement, each such Hopper Car shall be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently and conspicuously marked upon each side of each Hopper Car, in contemplation of the financing arrangement, as hereinbefore mentioned, the following legend in letters not less than one inch in height:

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION"

The Railway hereby agrees to indemnify the Builder against any liability, loss or expense incurred by it as a result of the placing of the aforementioned markings on the Hopper Cars.

In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced or destroyed on any Hopper Car, the Railway shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits or advantages of the Builder, including the right to receive the purchase price of the Hopper Cars as provided in the Purchase Agreement, may be assigned by the Builder and reassigned by any assignee at any time or from time to time, provided, however, that no such assignment shall subject any such assignee to any of the Builder's warranties, indemnities or any other obligations contained in this Agreement or in the Purchase Agreement. In the event the Builder shall assign its rights to receive the payments herein and/or under the Purchase Agreement, and the Railway shall receive written notice thereof from the Builder, together with a counterpart of such assignment stating the identity and the post office address of the assignee,

all payments thereafter to be made by the Railway under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to the Railway.

In the event of any such assignment by the Builder of its rights to receive any payments under this Agreement or under the Purchase Agreement, the rights of such assignee to such payments as may be assigned shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder in respect to the Hopper Cars, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railway by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railway, its successors and assigns, only against the Builder and its successors and assigns (other than assignees of such rights, benefits or advantages assigned pursuant to this Agreement).

The Railway agrees with the Builder that the execution by the Builder of this Agreement or the delivery by the Builder to the Railway of the Hopper Cars, as contemplated by this Agreement, shall not relieve the Railway of its obligations to accept, take and pay for the Hopper Cars in accordance with the terms of the Purchase Agreement, or impair any of the Builder's rights under said Purchase Agreement.

Attest:

(CORPORATE SEAL)

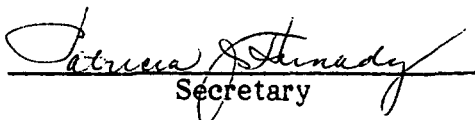

(Title) ASSISTANT SECRETARY

ACF SALES CORPORATION


By 
(Title) VICE PRESIDENT TREASURER


Attest:

(CORPORATE SEAL)


Secretary

THE CHESAPEAKE AND OHIO
RAILWAY COMPANY

By 
Assistant Vice-President
and Treasurer

APPROVED AS TO FORM

ATTORNEY

STATE OF NEW YORK)
) SS:
COUNTY OF YORK)

On this 6th day of April, 1981, before me personally appeared H. A. BORST, to me personally known, who, being by me duly sworn, says that he is VICE PRESIDENT and TREASURER of ACF SALES CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

[NOTARIAL SEAL]

Anthony M. Romanello
Notary Public

ANTHONY M. ROMANELLO
Notary Public, State of New York
No. 31-4703607
Qualified in New York County
Commission Expires March 30, 1983

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this 3rd day of April, 1981, before me personally appeared L. C. ROIG, JR., to me personally known, who, being by me duly sworn, says that he is Assistant Vice-President and Treasurer of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Company, that said instrument was signed and sealed on behalf of said Company by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Company.

[NOTARIAL SEAL]

June McGrath
Notary Public

JUNE McGRATH
Notary Public, State of Ohio - Cuya. Cty.
My Commission Expires Oct. 14, 1984

CERTIFICATE OF ACCEPTANCE

TO: ACF Sales Corporation
750 Third Avenue
New York, NY 10017

The Chesapeake and Ohio Railway Company
P. O. Box 6419
Cleveland, Ohio 44101

As an inspector and duly authorized representative of The Chesapeake and Ohio Railway Company ("C&O"), I do hereby certify that I have inspected and accepted, on behalf of said party under that certain Interim User Agreement dated as of March 1, 1981, between ACF Sales Corporation ("Builder") and C&O, the following units of equipment ("Equipment"):

Equipment: 4600 Cu.Ft. Covered Hopper Cars

AAR Mechanical Designation: LO

No. of Units:

C&O Road Nos.:

I do further certify the Equipment conforms to the Specifications, requirements and standards applicable thereto, and that there was plainly, distinctly and permanently and conspicuously marked on each side of each unit the following words in letters not less than one inch in height:

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED
WITH THE INTERSTATE COMMERCE COMMISSION"

The execution and delivery of this Certificate shall in no way relieve the Builder of its warranty with respect to the Equipment.

Inspector and Authorized Representative

Dated this _____ day of _____, 1981.